IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 13TH DECEMBER 2007 / 22ND AGRAHAYANA 1929

Bail Appl..No. 7847 of 2007

(CRIME NO. 755/2005 OF HOSDURG POLICE)
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PETITIONER:

MUHAMMED SALEEM.M.V., S/O. ISMAIL KUTTY,
ATED 27 YEARS, KUNNATH HOUSE, KUNNAMANGALAM.P.O.,
KOZHIKODE, PIN - 673 571.

BY ADV. SRI.O.D.SIVADAS.

RESPONDENTS:
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1. **THE SUB INSPECTOR OF POLICE, HOSDURG.**

2. **STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.**

BY PUBLIC PROSECUTOR SRI. JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 13/12/2007,THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 7847 of 2007

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Dated this the 13th day of December, 2007

O R D E R

Application for anticipatory bail. The petitioner faces indictment in a prosecution for offences punishable under Sections 279 and 304A I.P.C. The petitioner was arrested and enlarged on bail at the crime stage. Later final report has been filed, it is submitted. Cognizance has been taken by the learned Magistrate, but at the post-cognizance stage the petitioner, who was employed abroad, has not been served with any notice, summons or process of the court. He was, therefore, unable to appear before the learned Magistrate. He having been employed abroad, he had no knowledge of the proceedings at all. Consequently coercive processes have been issued against him. The petitioner finds such processes issued by the learned Magistrate chasing him.

2. According to the petitioner he is absolutely innocent. His absence was not willful or deliberate, but on account of

reasons beyond his control. He is willing to surrender before the learned Magistrate, but he apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. It is in these circumstances prayed that appropriate directions may be issued to release the petitioner on bail on the date of surrender itself.

3. It is certainly for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Sessions Magistrate would not consider the application for bail to be filed by the petitioner when he surrenders before the learned Magistrate on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

4. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned

Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R. BASANT)
Judge

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